

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

JEFFRIE ALAN SUMMERS II, on behalf of
himself and all others similarly situated,

Case No.

Plaintiff,

NOTICE OF REMOVAL OF ACTION
UNDER 28 USC § 1346(b)(1)

SEA MAR COMMUNITY HEALTH CENTERS

King County Superior Court
Case No. 22-2-00773-7 SEA

Defendant.

TO: THE CLERK OF THE COURT

AND TO: ALL PARTIES OF RECORD AND THEIR COUNSEL.

PLEASE TAKE NOTICE that Defendant SEA MAR COMMUNITY HEALTH CENTERS (“Sea Mar”), hereby gives notice of the removal of the above-captioned action, Case No. 22-2-00773-7 SEA, currently pending in the Superior Court of King County, Washington, to the United States District Court for the Western District of Washington at Seattle on the grounds set forth below:

I. STATE COURT ACTION

The State Court action to be removed, *Jeffrie Alan Summers II, on behalf of himself and on behalf of all others similarly situated v. Sea Mar Community Health Centers*, was filed in

1 King County Superior Court, State of Washington, on January 14, 2022. A true and correct copy
 2 of the Class Action Complaint filed in King County Superior Court Case No: 22-2-00773-7 SEA
 3 is attached as **Exhibit A**. This is a civil action arising out of alleged negligence per se violations
 4 of (1) HIPAA 45 C.F.R. § 160 and § 164, (2) unfair trade practices pursuant to FTC Act 15
 5 U.S.C. § 45(a)(1), and (3) RCW 19.86.101 Washington Consumer Protection Act; alleged
 6 violations of (4) RCW 19.255.010, Washington Data Breach Disclosure Law, and (5) RCW
 7 70.02.005, Washington State Uniform Healthcare Information Act; as well as allegations of (6)
 8 negligence, (7) breach of express contract, (8) breach of implied contract, (7) invasion of
 9 privacy, and (9) breach of confidence, with claims made by Plaintiffs for actual, consequential,
 10 nominal and statutory damages; attorney fees and costs; pre-judgment interest; and equitable and
 11 injunctive relief.

12 **II. GROUNDS FOR REMOVAL**

13 The Federally Supported Health Centers Assistance Act allows the United States to deem
 14 actors, agencies, and employees to be part of the Public Health Service.

15 **A. Sea Mar is a Deemed Employee of the Federal Government.**

16 Sea Mar is a community-based health care provider that receives funds from the Health
 17 Resources & Services Administration. Sea Mar receives government funding because it provides
 18 primary care services in underserved areas. Sea Mar is a Federally Qualified Health Center. As
 19 such, Sea Mar has been deemed by the Health Resources and Services Administration, in
 20 accordance with the Federally Supported Health Centers Assistance Act, to be a Public Health
 21 Service employee of the federal government. The relevant deemng notices are attached
 22 collectively as **Exhibit B**.

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B. The Federal Tort Claims Act, 28 U.S.C. 1346(b) Applies to Plaintiffs' Claims.

The Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 1346(b) *et seq.*, provides immunity from suits to Sea Mar because Sea Mar has been deemed to be a Public Health Service employee of the federal government.

Subject to the provisions of chapter 171 of this title, the district courts . . . shall have exclusive jurisdiction of civil actions against the United States . . . for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

The regulations establish that the federal government is the proper party defendant in an FTCA suit and not Public Health Service employees like Sea Mar.

C. The Public Health Services Act Applies to Sea Mar.

The Public Health Service Act provides liability protection to Public Health Service (“PHS”) employees like Sea Mar under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b). Sea Mar is a PHS employee under the Federally Supported Health Centers Assistance Act, 42 U.S.C. §§ 233(g)-(n). The *exclusive* remedy for damage for personal injury “resulting from the performance of medical, surgical, dental, or *related functions*, … by any commissioned … employee of the Public Health Service while acting within the scope of his office or employment” is *against the United States*. 42 U.S.C. § 233(a). Plaintiffs allege they suffered personal injuries, including anxiety and emotional distress, as a result of a data breach incident in the Sea Mar environment. The Federally Supported Health Centers Assistance Act (42 U.S.C. § 233(a)) provides absolute immunity for PHS employees acting within the scope of their employment. *Hui v. Castaneda*, 559 U.S. 799, 806 (2010).

D. Sea Mar's Conduct Was Function Required and Related to the Provision of Medical Care.

To facilitate medical care, Sea Mar—like any doctor’s office—creates medical records, and collects and maintains personal information from its patients. The maintenance, retention, and security of patients’ records are legally required and “related functions” to the provision of medical care within the scope of federal immunity. Plaintiffs’ claims arise from a data breach event that allegedly allowed access to patients’ personal identifying information (“PII”) and protected health information (“PHI”). Plaintiffs’ alleged injuries therefore undeniably arise out of the “related functions” to medical care—creating and maintaining medical, financial and other personal records of patients and their guarantors. Sea Mar qualifies for immunity, and in an FTCA suit a plaintiff’s exclusive remedy is to proceed in an action against the United States in district court.

III. TIME FOR REMOVAL

There is no time bar for Notice of Removal under the Federal Tort Claims Act 28 U.S.C. §1346(b)(1) because the district courts have exclusive jurisdiction over actions against the United States for negligent or wrongful acts or omissions committed by government employees. “Subject to the provisions of chapter 171 of this title, the district courts . . . shall have exclusive jurisdiction of civil actions against the United States . . . for injury or loss of property, or personal injury . . .”

Pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and the Federally Supported Health Centers Assistance Act, 42 U.S.C. §§ 233(g)-(n) the district court has exclusive jurisdiction over FTCA claims, and in an FTCA suit the only remedy is against the United States.

IV. REQUIRED DOCUMENTS

Defendant Sea Mar will promptly give written notice to all adverse parties. 28 USC § 1446(d).

In accordance with 28 USC § 1446 and LCR 101 (b)(1), a copy of the operative

1 complaint is attached and filed herewith as **Exhibit A**.

2 Opposing counsel is listed below and is being served with a copy of this Notice as set
3 forth in the Declaration of Service below in accordance with LCR 101(b)(2).

4 WHEREFORE, Defendant Sea Mar gives notice that the court action pending against it
5 in King County Superior Court has been removed from that court to the United States District
6 Court for the Western District of Washington at Seattle.

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8 DATED this 16th day of February, 2022 LEWIS BRISBOIS BISGAARD & SMITH LLP

9
10 *s/Kathleen A. Nelson*
Kathleen A. Nelson, WSBA #22826

11 *s/Randy J. Aliment*
Randy J. Aliment, WSBA #11440

12 *s/Aryn M. Seiler*
Aryn M. Seiler, WSBA #57270

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18 Attorneys for Defendant

DECLARATION OF SERVICE

I hereby certify that on February 16, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record and provide service via electronic mail to:

<p>Thomas E. Loeser, WSBA #38701 Hagens Berman Sobol Shapiro LLP 1301 Second Ave, Suite 2000 Seattle, WA 98101 (206) 623-7292</p> <p><i>Attorney for Plaintiff</i></p>	<p><input type="checkbox"/> via U.S. Mail, first class, postage prepaid <input type="checkbox"/> via Legal Messenger Hand Delivery <input type="checkbox"/> via Facsimile (206) 623-0594 <input checked="" type="checkbox"/> via CM/ECF <input checked="" type="checkbox"/> via E-mail per Eservice Agreement: toml@hbsslaw.com carrie@hbsslaw.com</p>
<p>John A. Yanchunis, Pro Hac Vice Ryan D. Maxey, Pro Hac Vice Morgan & Morgan Complex Litigation Group 201 N. Franklin Street, 7th Floor Tampa, FL 33602 (813) 223-5505</p> <p><i>Attorneys for Plaintiff</i></p>	<p><input type="checkbox"/> via U.S. Mail, first class, postage prepaid <input type="checkbox"/> via Legal Messenger Hand Delivery <input type="checkbox"/> via Facsimile <input checked="" type="checkbox"/> via CM/ECF <input checked="" type="checkbox"/> via E-mail per Eservice Agreement: jyanchunis@ForThePeople.com rmaxey@ForThePeople.com</p>
<p>Nicholas W. Brown Kristen R. Vogel, NY No. 5195664 Assistant United States Attorney Western District of Washington 700 Stewart Street, Suite 5220 Seattle, Washington 98101-1271 (206) 553-7970 / (206) 553-4067 Fax</p> <p><i>United States Attorneys</i></p>	<p><input type="checkbox"/> via U.S. Mail, first class, postage prepaid <input type="checkbox"/> via Legal Messenger Hand Delivery <input type="checkbox"/> via Facsimile <input checked="" type="checkbox"/> via CM/ECF <input checked="" type="checkbox"/> via E-mail kristen.vogel@usdoj.gov</p>

Dated February 16, 2022 at Seattle, Washington.

s/ Tami L. Foster

Tami L. Foster, Legal Assistant
Tami.Foster@lewisbrisbois.com